

1 provs that acceptance of an offer is determined  
2 based on the conduct of the parties. For example,  
3 in Ludowici-Celadon -- that's L-u-d-o-w-i-c-i -  
4 C-e-l-a-d-o-n Company versus McKinley, 307 Mich 149  
5 (1943) the Court stated, quote, "In acceptance of  
6 an offer to contract may be implied from the acts  
7 and circumstances of the parties."

8 Delphi's theory is that there was  
9 acceptance of the second contract in the present  
10 case, because the second contract dated February 5,  
11 2004 was sent to Center stating the new prices and  
12 stating the new extension of termination date.  
13 Further, Delphi contends that Center performed  
14 under that contract by shipping goods and by paying  
15 the new price as set forth in the second contract.  
16 Delphi points out that the terms of the contract  
17 state, "If seller accepts this contract in writing  
18 or commences any of the work or services which are  
19 the subject of this contract, seller shall --  
20 strike that -- seller will be deemed to have  
21 accepted this contract and buyer's general terms  
22 and conditions in their entirety without  
23 modification."

24 It is undisputed that there was no  
25 writing in which Center accepted this second

1 contract, but the question becomes whether it  
2 performed under the contract and thereby signified  
3 its acceptance. Center's position is that it was  
4 simply continuing to perform under the former  
5 contract which had a termination date of June 30th,  
6 2004, that it shipped the exact same parts that it  
7 had shipped under the former contract including the  
8 bar code, the removal of which was supposed to have  
9 justified the price reduction under the second  
10 contract. Therefore, Center argues since it  
11 continued to do precisely what it did before, there  
12 isn't any evidence that it was performing under the  
13 second contract, and because it did not state in  
14 writing that it was performing under the second  
15 contract or was accepting the second contract there  
16 had been no acceptance.

17           Whether or not there was acceptance is  
18 a question of fact. Based on all the evidence that  
19 was supplied the Court concludes that there was  
20 acceptance of the second contract. The Court comes  
21 to that conclusion based on the fact that Center  
22 did pay the new price under the second contract.

23           MR. DERIAN: Excuse me, your Honor. Do  
24 you mean Center accepted payment?

25           THE COURT: I'm sorry. Strike that.

Center accepted payment under the second contract.

There is no document that has been supplied to the Court indicating that Center was accepting payment under protest or that it disagreed with the amount that was being paid to it. The Court believes that if in fact Center believed that the initial contract so governed, it would have insisted on the prices as set forth in the initial contract. Therefore, by its conduct in accepting the lower price, Center manifested an assent to the second contract.

The document that establishes the payment history under the second contract as well as under the first contract is Plaintiff's Exhibit 105, and there was testimony from Mr. McCrackin that the prices paid after February 18, 2004 reflect the prices under the second contract. There was no dispute of that point by Center.

Center points to a letter dated February 25, 2004 sent by Mr. Sorenson to Mr. McCrackin that discusses the increase in steel prices and advises that Center will be reviewing all part numbers to determine the impact of rising costs for steel tubing. According to Mr. Sorenson, this was his way of registering some disagreement

1 with the prices under the second contract and/or  
2 manifesting some kind of disagreement with the  
3 concept that there had been a second contract  
4 entered into. The letter, however, does not  
5 support Center's position. It does suggest that  
6 Center is interested in discussing pricing. It,  
7 however, does not by its terms state that the  
8 second contract was never accepted. It does not  
9 state that the price terms of the second contract  
10 were not operative. It does not at all mention the  
11 extension of the contract terms under the second  
12 contract. Therefore, Defendant's Exhibit 2 does  
13 not present to the Court persuasive piece of  
14 evidence to suggest that Center did not accept the  
15 second contract.

16 To the contrary, the failure to make  
17 specific mention of the second contract either as  
18 to price or as to duration suggests to the Court  
19 that Center recognized that it had in fact accepted  
20 the second contract, but was seeking to renegotiate  
21 with Delphi.

22 Further evidence that supports Delphi's  
23 position and contradicts Center's position is found  
24 in exhibit -- Defendant's Exhibit 4b which was a  
25 spreadsheet prepared by Center and sent to Delphi.

1 The readsheet indicates that current price  
2 that exists is the price under the second  
3 contract -- actually, the prices under the second  
4 contract, not the prices under the first contract.  
5 That supports Delphi's position that the parties  
6 understood that the second contract was in fact  
7 accepted and operative.

8 The Court heard testimony that in the  
9 real world; that is to say, the real business  
10 world, communications between business people are  
11 not the type that would necessarily be prepared by  
12 lawyers unsuitable for being introduced into court  
13 is unequivocal statements of intent. The  
14 suggestion appears to be that there is more  
15 informality in the business world than there might  
16 be in the legal world. It is true business people  
17 communicate in a less formal manner. Nonetheless,  
18 once a business problem enters the legal world,  
19 fact finders can only rely on the testimony of  
20 witnesses and the documents that they've generated  
21 to determine what the intent of the parties was.

22 Center certainly was in a predicament  
23 wanting to maintain a good business relationship  
24 with Delphi and with General Motors, and yet found  
25 itself on the short end of a steel spike in

1 price. The Court believes that in fact there  
2 had not been an agreement to accept the second  
3 contract. Center could have crafted responses that  
4 would have preserved some memorialization of its  
5 position if there hadn't been a second contract  
6 entered into, and at the same time communicate its  
7 willingness to continue to negotiate a resolution  
8 and not leave its long-time customer in a difficult  
9 situation by threatening any immediate cut off.  
10 However, the communications between the parties  
11 while reflecting a negotiation over price that  
12 postdates the onset of the second contract, those  
13 communications don't in any way suggest that Center  
14 believed or was manifesting a belief, more  
15 importantly, that the second contract was not  
16 operative. Therefore, the Court believes that  
17 Center did accept the second contract and that that  
18 is the contract between the parties.

19 The next issue is what is the  
20 appropriate remedy in this case. As mentioned  
21 before, if Center were not required to continue to  
22 perform under the second contract, there would be  
23 serious dislocations that would result. There was  
24 specific testimony about a hundred and fifteen  
25 employees at Delphi who would be out of work and

1 some thousand employees at General Motors would  
2 suffer the same fate because of the just-in-time  
3 supply method that Delphi and GM have employed.  
4 Center is the sole source supplier for Delphi of  
5 the particular parts that are the subject of this  
6 litigation. The Court heard testimony of the  
7 just-in-time supply method and the sole source  
8 supply method to provide cost savings, but at the  
9 same time leave Delphi as well as General Motors  
10 vulnerable to significant harm in the event there  
11 is a disruption or a succession of supply.

12 The law recognizes that conjunctive  
13 relief is appropriate in the circumstances of this  
14 case. MCL 440.2716 provides, quotes, "Specific  
15 performance may be decreed where the goods are  
16 unique or another proper circumstance."

17 Comment 2 to the official text of  
18 Section 2.716 states, quote, "Output and  
19 requirement contracts involving a particular or  
20 peculiar available source or market are present  
21 today, the typical commercial specific performance  
22 situation. Uniqueness is not the sole basis of the  
23 remedy under the section, for the relief may also  
24 be granted in other proper circumstances and to  
25 cover a strong evidence of the other proper

1       circumstances." Here, the parts are unique. They  
2       are specialized parts. And there was both  
3       testimony as well as a stipulation that it would  
4       take in excess of ten months for Delphi to find an  
5       alternate supplier. Unless enjoined, that would  
6       lead to significant hardship for employees as well  
7       as significant financial loss that Center would be  
8       hard pressed to make whole.

9               There are numerous cases where specific  
10       performance has been awarded analagous situations.  
11       The Court will simply note a few of these: Jaup,  
12       spelled J-a-u-p. The Homestead 334 Mich 614 (1952).  
13       Bohnsack, spelled B-o-h-n-s-a-c-k. The Detroit  
14       Trust Company 292 Mich 167 (1940).

15              There are cases outside of Michigan to  
16       the same affect where specific performance has been  
17       awarded where a supply contract is threatened.  
18       See, for example, Laclede, spelled L-a-c-l-e-d-e  
19       Gas Company versus Amoco Oil Company. 522 F 2nd. 33  
20       (8 cir. c-i-r 1975); E Airlines Inc. The Gulf Oil  
21       Corp. 415 F sub 429 (S) (D) Florida (1975). There  
22       are several other cases that are referenced in  
23       Plaintiff's trial brief to the same effect. The  
24       Court also notes the case of Kelsey-Hayes Company  
25       The Galtaco, G-a-l-t-a-c-o, Radlaw, R-e-d-l-a-w.



Castles Corporation, 749 F.2d 1044 (E.D. Mich.

(1990). where the propriety of equitable relief was recognized in an automotive industrial context.

Although it is not necessarily the case in the request for a permanent injunction following a trial where a breach of contract has been demonstrated involving a unique product for the Plaintiff to demonstrate irreparable harm, the Court believes that that has been demonstrated in this case and Defendant does not contest and, in fact, appears to have stipulated that the failure of Center to continue to supply the product to Delphi would amount to irreparable injury. This is supported by the loss of jobs to so many employees as well as the catastrophic financial loss that would result from the shut downs of the Delphi and General Motors plants, a loss of which would be beyond Center's ability to compensate.

Similarly, in this context, it is not clear that a balancing of harms needs to be made or that the public interest needs to be taken into account, but to the extent that it is required, the Court will find as well that the balance of harm does tip in favor of the issuance of an injunction for the reasons previously mentioned, and that the

1 public interest is served by enforcing contractual  
2 obligations in this setting where the failure to  
3 observe contractual obligations were so significant  
4 they affect such a wide number of individuals.

5 The Court will grant the request for  
6 relief as follows. The Court does declare that the  
7 second contract has been accepted and is in effect  
8 and that Center is obligated to perform under it.  
9 Those terms are found in Plaintiff's Exhibit 104  
10 and the Court specifically finds that the new  
11 prices for the subject parts are operative and that  
12 the contract extends to June 30th, 2005.

13 The Court also will grant a permanent  
14 injunction to require Center to comply with the  
15 terms of the second contract. The Court does have  
16 some sympathy for Center's predicament because of  
17 its cost increases that it faces, but the Court  
18 believes that while that is significant on a  
19 business level, it is not significant on a legal  
20 level. These were both fixed priced contracts.  
21 There was no provision in them for any escalating  
22 costs that Center might face. And there's no  
23 provision of the law that would allow Center to  
24 demand a higher price or demand that Delphi accede  
25 to Center's request for renegotiation of price.

1 Is there anything at the parties need  
2 clarified?

3 MR. DERIAN: Your Honor, I believe your  
4 ruling is quite clear, and I would like to thank  
5 the Court for recognizing the party's needs, the  
6 urgency for a quick decision and your extraordinary  
7 public service in allocating this Friday afternoon  
8 to the parties for this bench trial.

9 MR. MURRAY: Nothing clarified, your  
10 Honor. Thank you.

11 THE COURT: All right. Now, Mr. Derian  
12 has submitted to me a proposed judgment. Has then  
13 been presented to Mr. Murray?

14 MR. DERIAN: No, it hasn't, your Honor.

15 THE COURT: All right. What I'm going  
16 to do is -- do you have a copy to give to Mr.  
17 Murray?

18 MR. DERIAN: I do not, your Honor. I'm  
19 sorry.

20 THE COURT: I'll give this back to you  
21 Mr. Derian. Why don't you share it with Mr.  
22 Murray. I'm going to recess for about five minutes  
23 and hopefully you can work out the language.

24 MR. DERIAN: Is your Honor suggesting  
25 that this current language comports with the

Court ruling?

THE COURT: Well, I want Mr. Murray to  
take a look at it. I was under the impression that  
he had seen it, so I'm not going to offer any  
comments until he's had a chance to look at it.  
All right. I'll be in recess for five minutes.

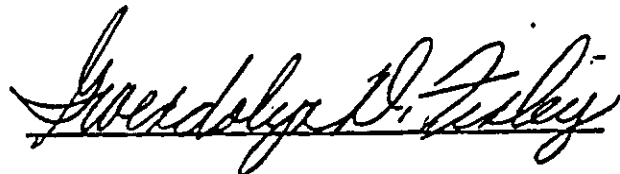
(At 4:20 p.m., Court in recess.)

- - -

STATE OF MICHIGAN)

COUNTY OF OAKLAND)

I, Gwendolyn D. Finley, Certified  
Reporter of the Sixth Judicial Circuit Court, State  
of Michigan, do hereby \*certify that the foregoing  
pages 1-21 inclusive, comprise a true and correct  
transcript of the proceedings and testimony taken  
in the matter of Delphi Automotive Systems, LLC  
versus Center Manufacturing, Inc. Case Number  
04-060078 CK, on Friday, August 13, 2004.



Gwendolyn D. Finley, CSR-7127  
Sixth Judicial Circuit Court  
1200 N. Telegraph Road  
Pontiac, Michigan 48341  
(313) 986-0650

August 16, 2004

5

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

INTERTEC SYSTEMS, LLC,

Plaintiff,

v.

Case No. 04-CV-73661-DT

MULTIMATIC, INC.,

Defendant.

---

**ORDER GRANTING INTERTEC'S "MOTION FOR PRELIMINARY INJUNCTION"**

Pending before the court is Plaintiff Intertec System's "Motion for Preliminary Injunction," filed on September 21, 2004. The court has considered the briefs and the testimony presented at the September 29, 2004 hearing in this matter, and for the reasons set forth below will grant Plaintiff's motion.

**I. BACKGROUND**

Plaintiff Intertec is a Tier I supplier of interior automotive systems. (Pl.'s Compl. at ¶ 5.) Defendant Multimatic is a supplier of, among other things, steel-based products, to Tier I automotive suppliers such as Plaintiff. (*Id.* at ¶ 6.) On July 16, 2002, Plaintiff and Defendant entered into a long-term agreement for the supply of Part No. 4000135, the JSB Cross-Car Beam ("beam"). (*Id.* at ¶ 7.) The beam is designed and formulated for Plaintiff's specific engineering requirements. (*Id.* at ¶ 8.) Plaintiff incorporates Defendant's beam into the dashboard/instrument panel assemblies ("assemblies") it manufactures for Mazda Motors Corporation ("Mazda"). (*Id.* at ¶ 9.)

Plaintiff sends its shipments of assemblies to Mazda's assembly plant in Flat Rock, Michigan. (*Id.* at ¶ 10.) Plaintiff is the only supplier of the assemblies to Mazda, and Mazda cannot make its "Mazda 6" model without the assemblies. (*Id.* at ¶ 10.) In addition, the Flat Rock plant is a joint assembly plant of Mazda and Ford Motor Company. (*Id.* at ¶ 11.) Because the Ford Mustang vehicle works off of the same platform as Mazda, Ford would ultimately be unable to produce the Mustang if not supplied with Plaintiff's assemblies. (*Id.* at ¶ 11.)

The Intertec-Multimatic contract is a requirements contract, requiring Defendant to supply Plaintiff with beams as needed, through June 30, 2007. (*Id.* at ¶ 7.) The Intertec-Multimatic contract language includes a "fixed price for the beam that decreases 4% each year. . . The fixed price for fiscal year 2003 [October 1, 2002-September 30, 2003] was \$33.6733 (Canadian Dollars) ("CDN"). On October 1, 2003, the price decreased 4% for the fiscal year 2004 [October 1, 2003-September 30, 2004], from \$33.6733 [CDN] to \$32.326 [CDN]." (*Id.* at ¶ 12.) "[The price projected for] October 1, 2004, the beginning of fiscal year 2005, [was] \$31.03296 [CDN] [a 4% decrease in price]." (*Id.* at ¶ 12.)

On July 2, 2004, Plaintiff received a letter from Defendant requesting a price increase to be paid by Plaintiff for Defendant's further shipments of its beams. In that letter, Defendant stated that its cost for raw materials had increased to make the beam, and that Inmet [a division of Multimatic] could not remain viable [while] absorbing these costs." (Pl.'s Mot. Br., Ex. B.) In that same letter, Defendant threatened to stop shipment of its beams on August 2, 2004 if Plaintiff did not comply with Defendant's



price increase. (*Id.*) During a series of meetings and correspondence over the next two months, Defendant extended the date that it threatened to stop shipment of the beam. (Pl.'s Compl. at ¶ 17.)

On September 3, 2004, Defendant asked for revised pricing of \$37.6394 CDN per beam effective retroactive to August 1, 2004 and also threatened to stop shipping its beams as of Tuesday, September 21, 2004 if Plaintiff refused to agree. (Pl.'s Mot. Br., Ex. C.) Plaintiff asks this court to grant a preliminary injunction to prevent Defendant from ceasing shipment of its beams until this matter is resolved.

## II. STANDARD

### A. Preliminary Injunction

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). The court must consider four factors in determining whether to grant a preliminary injunction:

- (1) likelihood of success on the merits;
- (2) potential for irreparable harm;
- (3) potential of adverse public impact; and
- (4) potential harm to the plaintiff weighed against the potential harm to the defendant.

*Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir. 2003). None of these factors, standing alone, is a prerequisite to relief; rather, they must be balanced. *In re DeLorean*, 755 F.2d 1223, 1229 (6th Cir. 1985). Thus, "no single factor is determinative as to the appropriateness of equitable relief." *Roth v. Bank of the Commonwealth*, 583 F.2d 527, 537 (6th Cir. 1978).

The Sixth Circuit has long recognized that "[t]he object and purpose of a preliminary injunction is to preserve the existing state of things until the rights of the parties can be fairly and fully investigated." *In re DeLorean*, 755 F.2d at 1229 (quoting *Blount v. Societe Anonyme du Filtre Chamberland Systeme Pasteur, et al.*, 53 F. 98, 101 (6th Cir. 1892)). In the case at bar, the court finds that a preliminary injunction is warranted.

### III. DISCUSSION

#### A. Likelihood of Success

The first prong of the preliminary injunction test, likelihood of success on the merits, weighs in favor of Plaintiff. Plaintiff and Defendant had an agreement where Defendant committed to providing Plaintiff with its beam at an agreed-upon contract price. Both the Intertec-Multimatic contract language and counsel's representations to the court at the hearing held in this matter provide evidence that the Intertec-Multimatic contract established a fixed price for the beam that decreases at a rate of 4% each year. The fixed price for fiscal year 2003 (October 1, 2002-September 30, 2003) was \$33.6733 CDN. On October 1, 2003, the price decreased 4% for the fiscal year 2004 (October 1, 2003-September 30, 2004), from \$33.6733 CDN to \$32.326 CDN. The price projected for October 1, 2004, the beginning of fiscal year 2005, was \$31.03296 CDN (a 4% decrease in price). (*Id.* at ¶ 12.)

In its motion for a preliminary injunction, Plaintiff is seeking the specific performance of its requirements contract with Defendant. Mich. Comp. Laws §440.2716 expressly provides for specific performance of a contract:

1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

Mich. Comp. Laws § 440.2716.

Moreover, the court will generally enforce the unambiguous terms of a contract. *D'Avanzo v. Wise & Marsac*, 565 N.W.2d 915, 917 (1997). In this case, the contract terms do not appear to be ambiguous, as the contract language does not seem to be "subject to multiple reasonable interpretations." *City of Wyandotte v. Consolidated Rail Corporation*, 262 F.3d 581, 588 (2001). In addition, the contract's meaning does not appear to be "obscure and its construction does [not] depend upon other and extrinsic facts in connection with what is written." *D'Avanzo*, 565 N.W.2d at 917. Based on the record and the hearing held in this matter, the parties most likely established \$33.6733 CDN as the base price for the contract, with a 4% rate of decrease each year. Where a price term is unambiguous, the court may construe the terms of the contract. *Id.*

Defendant states that there have been modifications to the contract since the original contract that have altered the meaning of the agreement. Defendant's assertions may be proven true at a later proceeding. But at this stage, the court need only find that the first prong of the preliminary injunction test weighs in favor of Plaintiff. There is a likelihood of success in Plaintiff's goal of proving the original terms of the Intertec-Multimatic agreement and being granted specific performance of the contract because of the unambiguous contract language.

### B. Irreparable Harm

A movant seeking a preliminary injunction must prove that any claimed irreparable harm is imminent, with a substantial threat of impending injury. *McDonald's Corp. v. Burger King Corp.*, 87 F. Supp. 2d 722, 725 (E.D. Mich.1999). In evaluating irreparable harm, an important factor is whether the potential damages that would result from the defendant's continued action would be "economic in nature and fully compensable monetarily." *Taubman*, 319 F.3d at 778. If the plaintiff's damages are purely economic, the potential harm is not deemed to be irreparable. *Id.* at 778.

In this case, the loss that Plaintiff, Ford and Mazda will experience is substantial and not fully compensable monetarily. If Defendant is allowed to cease shipment of beams to Plaintiff, Plaintiff will very soon run out of the beam. Based on the pleadings presented to the court and the arguments made at the hearing, it is clear that Mazda's Flat Rock Assembly Plant will then run out of Plaintiff's assemblies, and will consequently have to shut down its Mazda 6 line. The evidence also suggests that because Ford shares the Flat Rock Assembly Plant and its Mustang operation works off of the same platform as the Mazda 6, Ford will have to stop producing its Mustang vehicle on the same day.

Indeed, the ceasing of shipments in the automobile industry can wreak particular havoc. For example, in *Kelsey-Hayes Co. v. Galtaco Redlaw Castings Corp.*, 749 F. Supp. 794, 798 (E.D. Mich. 1990), the *Kelsey* court noted that:

It is well known that in an effort to promote efficiency, car manufacturers are reducing the size of their reserve banks of parts. As a result, component parts are often incorporated into a finished product within a few hours of their delivery. A supplier's failure to make scheduled

shipments may have immediate and dramatic consequences . . . Thus, a breach of contract in the automotive industry may be more coercive than in other industries.

In *In re Autostyle Plastics, Inc.*, 216 BR 784 (Bankr. W.D. Mich. 1997), the court discussed the chain of events that can result from a plant shutdown. The court recognized Debtor Autostyle's fear that:

any interruption in its production schedules might result in a shut down of certain assembly lines while GM and other customers obtained new suppliers and made the necessary arrangements for new production tooling and dies. In turn, these shut downs might cause the layoff of innumerable employees of GM and Debtor's other customers . . . Debtor Autostyle calculated that a shut down of a GM assembly line could result in a damage claim by GM and an offset against outstanding GM accounts receivable in excess of \$9 million per day.

(*Id.* at 788.)

Likewise, in this case, there will be a cascading effect on Plaintiff, Mazda, Ford and their employees if Multimatic cuts off its supply of beams to Plaintiff. For example, Mazda and Ford will face immediate plant shutdowns. These shutdowns could very likely result in Mazda and Ford initiating litigation against Plaintiff. In addition, Plaintiff, Mazda, and Ford will lose employee work hours and productivity as a result of the shut downs.

### **C. Public Impact**

As described above, the closing of Intertec's plant would have a significant impact on Mazda and Ford and its employees, and would disrupt the local economy where these plants are located. The public interest will be served by granting Plaintiff's requested injunctive relief since it will prevent a shutdown of Plaintiff, Mazda and Ford, consequent layoffs and other harm to the local and state economies.

#### **D. Weighing the Harms**

In this case, Defendant will not realize as much profit as it otherwise would if the injunction were not granted, as it indicated in its July 2, 2004 letter. However, Plaintiff and the local economy will suffer the severe harm discussed above if the injunction is not granted.

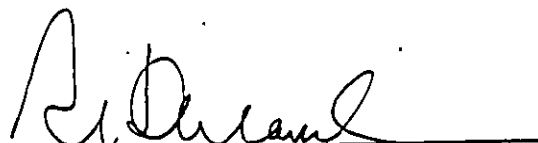
In order to minimize Defendant's harm in the event that Defendant ultimately prevails in this matter, the court will establish an escrow account that Plaintiff will be required to pay into, in the amount of the difference between \$32.326 CDN per beam and \$41.30 CDN per beam.

#### **IV. CONCLUSION**


**IT IS ORDERED** that Plaintiff's "Motion for Preliminary Injunction" [Dkt. # 3] is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff pay Defendant \$32.326 CDN per beam and place the **monetary difference** between \$32.326 CDN and \$41.30 CDN into an **interest-bearing escrow account** until the completion of these proceedings. Plaintiff is directed to deposit this amount with the Clerk of Court each time it makes a payment of \$32.326 CDN per beam to Defendant for its shipment of beams. Plaintiff is responsible for converting the Canadian funds into United States funds and depositing United States funds into the escrow account. Plaintiff must also include with its deposits a statement detailing how many beams each deposit amount covers and how many beams were shipped in that particular shipment. Pursuant to Local Rule 67.1, the Clerk of Court shall accept only cash, certified check, cashier's check or money order

for deposit in an interest-bearing account. The Clerk of Court is hereby directed to deduct from the account any fee authorized by the Judicial Conference of the United States.

  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: October 14, 2004

PURSUANT TO RULE 77 (d), FED. R. CIV. P.  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

INTERTEC SYSTEMS, LLC,  
*a Michigan limited liability company,*

*Plaintiff,*

v.

Case No. 04-73661  
Hon. Robert H. Cleland

MULTIMATIC, INC.,  
*a Canadian corporation,*

*Defendant.*

**FILED**

SEP 20 2004

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EASTERN MICHIGAN

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**ORDER GRANTING TEMPORARY RESTRAINING ORDER**

This matter is before the Court on Plaintiff Plaintiff Intertec Systems, LLC's ("Intertec") Motion for a Temporary Restraining Order (the "Motion"). This Court has conducted a hearing on the Motion. Upon review of the brief and arguments presented by the parties, and being fully advised of the premises, this Court finds that:

If Defendant Multimatic, Inc. ("Multimatic") does not continue to order steel and make shipments of the J56 Cross-Car Beam ("the Beam") it produces for Intertec, Intertec will be irreparably damaged because of Intertec's need for the Beam on or before September



23, 2004. Furthermore, injunctive relief would preserve the status quo and serve to keep the parties in their present condition.

This Order granting Intertec's Motion for a Temporary Restraining Order is being entered because of the immediate danger that would result to Intertec, its customer, Mazda, and other automotive suppliers unless such an order is entered, and the lack of time to prevent such an occurrence.

THE COURT ORDERS that:

1. Defendant Multimatic is immediately restrained and enjoined from: (a) Selling, disposing, hindering, transferring or otherwise discarding all materials, tooling, equipment, forms, cash or other assets necessary to ship the Beam it produces for Intertec under the Contracts; and (b) Taking any activity or making any communication inconsistent with its obligations to timely supply Intertec with sufficient production quantities of the Beam under the Contracts, and this obligation shall continue through September 27, 2004;
2. Defendant Multimatic shall continue to specifically perform its obligations under its Contracts with Intertec, including, but not limited to ordering steel and production and immediate delivery of the Beam through September 27, 2004;
3. Intertec shall pay Multimatic \$33.75 per Beam beginning today, September 21, 2004, through September 27, 2004, \$1.43 of which is ~~to be made "under protest," and the remaining \$32.32~~

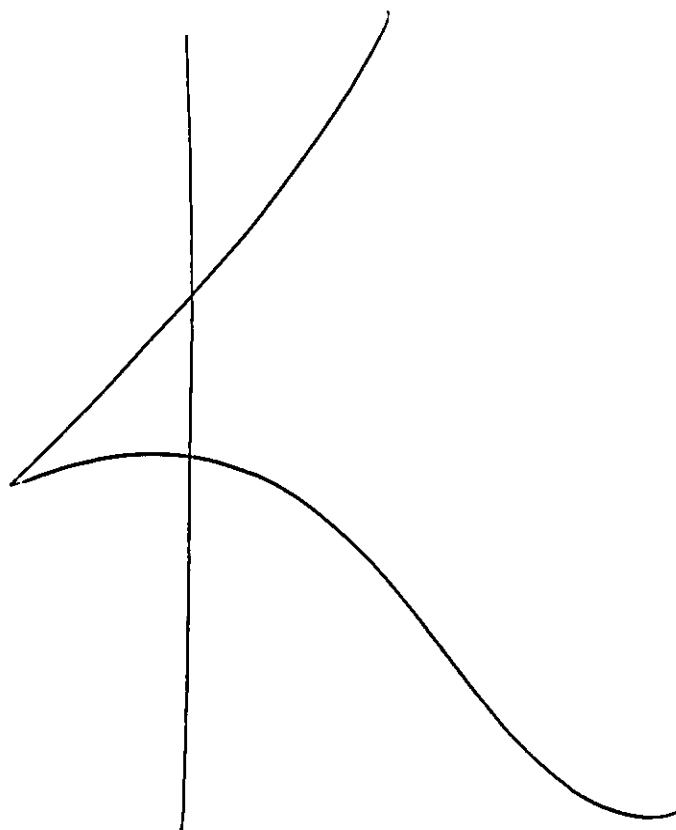
NB

~~of which is the current fixed price under the agreement between the parties.~~ NGE

4. The parties and/or their attorneys shall appear before this Court on a date to be set by the Court for a hearing on Intertec's Motion for Preliminary Injunction.

SEP 21 2004  
Date

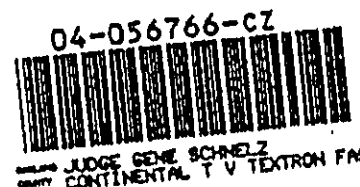
Nancy G. Edmunds  
Honorable Nancy G. Edmunds  
Presiding Judge



STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT  
RECEIVED FOR FILING  
OAKLAND COUNTY CLERK

CONTINENTAL TEVES, N.A.,  
a Delaware corporation,

2004 MAR 11 P 4:11



Plaintiff,

BY: \_\_\_\_\_  
DEPUTY COUNTY CLERK

vs.

Case No. 04-056766-CZ  
Hon. Gene Schnelz

TEXTRON FASTENING SYSTEMS, INC.,  
a Delaware corporation,

Defendant.

BUTZEL LONG, P.C.

By: Edward M. Kronk (P16258)  
Herbert C. Donovan (P51939)  
John E. Benko (P58874)

Attorneys for Plaintiff  
150 West Jefferson, Suite 100  
Detroit, MI 48226  
(313) 225-7000

KERR, RUSSELL & WEBER, PLC

By: William A. Sankbeil (P19882)  
Attorneys for Defendant  
500 Woodward Ave Ste 2500  
Detroit, MI 48226-5499  
(313) 961-0200

AMENDED TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE

At a session of said Court, held in the Oakland  
County Circuit Court, State of Michigan, on  
MAR 11 2004

PRESENT: Hon. GENE SCHNELZ  
Circuit Court Judge

The Court, having reviewed and considered Plaintiff Continental's Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction (the "Motion") under MCR 3.310, Brief in Support, Verified Complaint and exhibits attached thereto, and being otherwise fully advised in the premises, finds that:

- A. If Defendant Textron Fastening Systems, Inc. ("Textron") does not continue to make and/or resume shipments of the fasteners, machine parts, solenoids, cold formed parts and other products listed in the spreadsheet attached as Ex. 1 to the Verified Complaint (the "Components") it produces for Plaintiff Continental, Continental will be irreparably damaged.
- B. Continental has sufficiently demonstrated the following to serve as a basis for the Temporary Restraining Order: (1) The harm suffered by Continental in the absence of injunctive relief would be greater than that suffered by Textron; and (2) The public interest is served by the issuance of this Temporary Restraining Order, as the shutdown of plants with consequent layoffs and other harm to the local, state and national economy would be avoided;
- C. Notice of the Motion was given to counsel for Textron by telephone, fax, hand delivery and U.S. mail, and counsel appeared; and
- D. No bond is required as Continental is adequately able to respond in damages if the relief requested herein was improvidently granted and Textron wrongfully damaged.

THE COURT ORDERS that:

1. Defendant Textron shall resume immediate delivery of the identified Components to Continental.
2. The parties and/or their attorneys shall appear before this Court on May 5, 2004, at 1:30 p.m., and show cause, if any, why the Court should not issue a preliminary injunction compelling Textron to specifically perform its obligations to Continental under the Contracts.

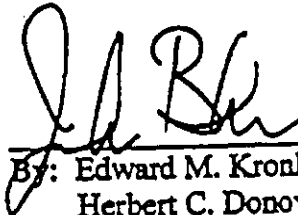
3. This Temporary Restraining Order was originally issued on the 9<sup>th</sup> day of March, 2004, at 3:45 p.m. This Order shall remain in effect until May 5, 2004, at 1:30 p.m., or until a decision is made on Continental's Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction.

**GENE SCHNELZ**  
Circuit Judge

Circuit Court Judge

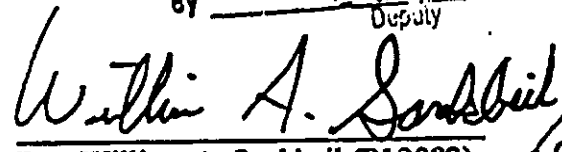
APPROVED AS TO FORM:

**BUTZEL LONG, P.C.**



By: Edward M. Kronk (P16258)  
Herbert C. Donovan (P51939)  
John E. Benko (P58874)  
Attorneys for Plaintiff  
150 West Jefferson, Suite 100  
Detroit, MI 48226  
(313) 225-7000

A TRUE COPY  
G. WILLIAM CADDELL  
Oakland County Clerk-Register of Deeds  
**KERR, RUSSELL & WEBER, PLC**  
by \_\_\_\_\_ Deputy

  
By: William A. Sankbeil (P19882)  
Attorneys for Defendant  
500 Woodward Ave Ste 2500  
Detroit, MI 48226-5499  
(313) 961-0200

*W. A. Sankbeil  
get attached.*

648112

3. This Temporary Restraining Order was originally issued on the 9<sup>th</sup> day of March, 2004, at 3:45 p.m. This Order shall remain in effect until May 5, 2004, at 1:30 p.m., or until a decision is made on Continental's Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction.

---


Circuit Court Judge

APPROVED AS TO FORM:

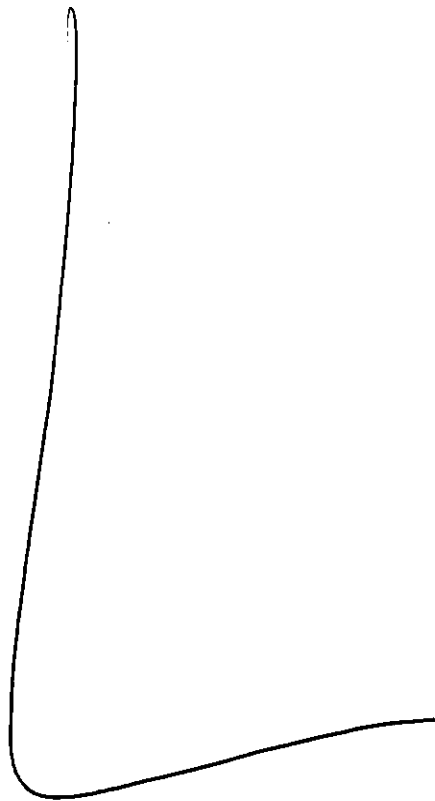
BUTZEL LONG, P.C.

KERR, RUSSELL & WEBER, PLC

By: Edward M. Kronk (P16258)  
Herbert C. Donovan (P51939)  
John E. Benko (P58874)  
Attorneys for Plaintiff  
150 West Jefferson, Suite 100  
Detroit, MI 48226  
(313) 225-7000

  
By: William A. Sankheil (P19882)  
Attorneys for Defendant  
500 Woodward Ave Ste 2500  
Detroit, MI 48226-5499  
(313) 961-0200

648112

A large, handwritten capital letter 'L' in black ink, centered on the page. The letter is formed by a single continuous stroke, with a vertical line on the left and a horizontal line at the bottom that curves slightly to the right.



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

INTIER AUTOMOTIVE, INC. d/b/a  
CAMSLIDE MFG.-AURORA, CAMSLIDE MFG.-  
NEW MARKET and SLIDE-MASTER, an Ontario  
corporation, INTIER AUTOMOTIVE SEATING  
OF AMERICA, INC. d/b/a ROMECH, a  
Delaware corporation, INTIER AUTOMOTIVE  
INTERIORS OF AMERICA, INC. d/b/a  
INNERTECH-NASHVILLE, a Delaware  
corporation, and INTIER AUTOMOTIVE  
CLOSURES, INC. d/b/a DORTEC INDUSTRIES,  
KTM LOCKS and WINDO MOTION I and II, an  
Ontario corporation,

Plaintiffs,

Case No.

-vs-

Hon.

TEXTRON FASTENING SYSTEMS, INC.,  
a Delaware corporation, AVDEL, INC., an  
Ontario corporation, CAMCAR TEXTRON,  
an Ontario corporation, and BURKLAND TEXTRON,  
INC., a Michigan corporation,

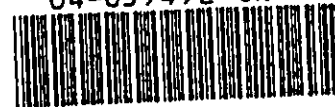
Defendants.

---

Edward H. Pappas (P23224)  
Kathleen A. Lang (P34695)  
Brian M. Akkashian (P55544)  
DICKINSON WRIGHT PLLC  
Attorneys for Plaintiff  
500 Woodward Avenue  
Suite 4000  
Detroit, MI 48226  
(313) 223-3500

---

04-059492-CK



JUDGE WENDY L. POTTS  
INTIER AUTOM V TEXTRON FASTE

**TEMPORARY RESTRAINING ORDER**

At a session of said Court held in the Courthouse in  
the City of Pontiac, County of Oakland and State of  
Michigan on JUL 01 2004

**RICHARD D. KUHN**

PRESENT: Hon. \_\_\_\_\_  
Circuit Court Judge

This matter has come before the Court on Plaintiffs' Motion for *Ex Parte* Temporary Restraining Order and Preliminary Injunction under MCR 3.310. The Court, having read the Verified Complaint and all other documents submitted in connection with this motion and brief in support and being otherwise fully advised, finds as follows:

If Defendants Textron Fastening Systems, Inc. ("Textron Fastening Systems"), Avdel, Inc. ("Avdel"), Camcar Textron ("Camcar") and Burkland Textron, Inc. ("Burkland") (collectively "Textron") fail to provide the parts to the Plaintiffs Intier Automotive, Inc. d/b/a CamSlide Mfg.-Aurora, CamSlide Mfg.-Newmarket and Slide-Master ("CamSlide"), Intier Automotive Seating of America, Inc. d/b/a Romech ("Seating"), Intier Automotive Interiors of America, Inc. d/b/a Innertech-Nashville ("Interiors") and Intier Automotive Closures Inc. d/b/a Dortec Industries, KTM Locks and Windo Motion I and II ("Closures") (collectively "Intier"), Textron will be in breach of its contractual agreements with Intier and Intier will be irreparably damaged as the injury caused by Textron's conduct is substantial, difficult to measure and would injure Intier's relationships with its customers as well as its goodwill and reputation in the automotive industry. Moreover, Textron's conduct would likely impact the employment and livelihood of thousands of workers and cause the shut down of several manufacturing facilities. Further, issuance of a temporary restraining order will preserve the status quo pending a hearing on Intier's Motion for Preliminary Injunction.

IT IS HEREBY ORDERED that Textron shall continue to produce and ship the quantity and quality of parts ordered by Intier during the period this Order remains in effect and that Textron shall not take any action or make any communications to cause Textron to cease or reduce such shipments during the period this Order is in effect.

IT IS FURTHER ORDERED that this Temporary Restraining Order is issued on ~~June~~ <sup>July</sup> 1, 2004 and that no security is required as a prerequisite to the issuance of this Order because it appears that Textron will not be damaged by issuance of this Order as it preserves the status quo and, in any event, Intier appears to be able to respond in damages if the relief requested herein were to be improvidently granted and Textron be wrongfully damaged. The Order shall remain in effect until a decision is made on Intier's Motion for Preliminary Injunction or until fourteen (14) days after entry of this Order, whichever occurs first.

IT IS FURTHER ORDERED that the parties will appear for a preliminary injunction hearing on July 6, 2004 at 8:30 <sup>A.M.</sup> o'clock. Intier shall serve a copy of this Order on Textron at their office located at 840 West Long Lake Road, Suite 450, Troy, Michigan 48098.

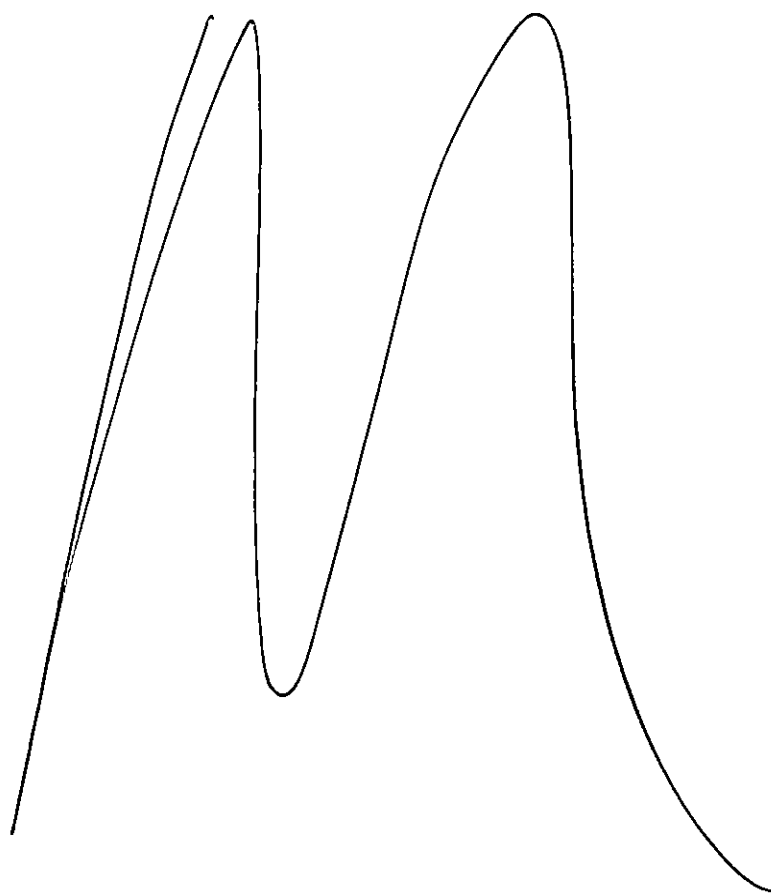
**RICHARD D. KUHN**

Circuit Court Judge

Date: June 30, 2004

DETROIT 99993-926 819316

A TRUE COPY  
G. WILLIAM CADDELL  
Oakland County Clerk - Register of Deeds  
By [Signature]  
Deputy

A handwritten signature in black ink, consisting of a series of connected loops and curves, resembling a stylized 'M' or 'W'.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAK

INTIER AUTOMOTIVE INTERIORS OF  
AMERICA, INC. d/b/a INNERTECH-  
SHREVEPORT, a Delaware corporation,

RECEIVED FOR FILING  
OAKLAND COUNTY CLERK

2004 AUG 24 P 12:56



Plaintiff,

Case No. 04-

-CK

v.

Hon.

NYX, INC., a Michigan corporation, and  
NYX SHREVEPORT, LLC, a Michigan  
limited liability company,

Defendants.

Edward H. Pappas (P23224)  
Kathleen A. Lang (P34695)  
Brian M. Akkashian (P55544)  
Dickinson Wright PLLC  
Attorneys for Intier  
500 Woodward Avenue, Suite 4000  
Detroit, MI 48026  
(313) 223-3500

TEMPORARY RESTRAINING ORDER

At a session of said Court held in the Courthouse in  
the City of Pontiac, County of Oakland and State of  
Michigan on AUG 24 2004

PRESENT: Hon. FRED M. MESTER  
Circuit Court Judge

This matter has come before the Court on Plaintiff's Motion for *Ex Parte* Temporary  
Restraining Order and Preliminary Injunction under MCR 3.310. The Court, having read the

Verified Complaint and all other documents submitted in connection with this motion and brief in support and being otherwise fully advised, finds as follows:

~~If Defendants NYX, Inc. and NYX Shreveport, LLC ("Defendants") fail to provide the Parts to Plaintiff Intier Automotive Interiors of America, Inc. d/b/a Innertech Shreveport ("Intier"), Defendants will be in breach of their contractual agreements with Intier and Intier will be irreparably damaged as the injury caused by Defendants' conduct is substantial, difficult to measure and would injure Intier's relationships with its customers as well as its goodwill and reputation in the automotive industry. Moreover, Defendants' conduct would likely impact the employment and livelihood of thousands of workers and cause the shut down of several manufacturing facilities. Further, issuance of a temporary restraining order will preserve the status quo pending a hearing on Intier's Motion for Preliminary Injunction:~~

*F*  
8/24/04

IT IS HEREBY ORDERED that Defendants shall continue to produce and ship the quantity and quality of parts ordered by Intier during the period this Order remains in effect and that Defendants shall not take any action or make any communications to cause Defendants to cease or reduce such shipments during the period this Order is in effect. *& That Plaintiff shall pay Defendants the prices stated in Intier's August 18, 2004 purchase order, PO #*

IT IS FURTHER ORDERED that this Temporary Restraining Order is issued on August 24, 2004, Rev 5, 2004 and that no security is required as a prerequisite to the issuance of this Order because it appears that Defendants will not be damaged by issuance of this Order as it preserves the status quo and, in any event, Intier appears to be able to respond in damages if the relief requested herein were to be improvidently granted and Defendants be wrongfully damaged. The Order shall remain in effect until a ~~decision is made on Intier's Motion for Preliminary Injunction or~~ *September 1, 2004* ~~until fourteen (14) days after entry of this Order, whichever occurs first.~~ *further order of the court.*

*F*  
8/24/04

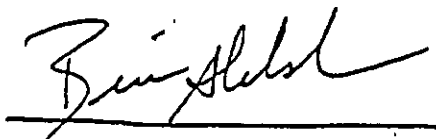
IT IS FURTHER ORDERED that the parties will appear for a preliminary injunction hearing on Sept. 1, 2004 at 1:30 pm o'clock. Intier shall serve a copy of this Order on Defendants.

  
Circuit Court Judge

Date: August 24, 2004

DETROIT 99993-926 819316

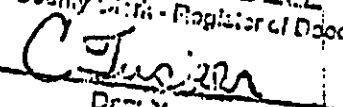
Approved as to Form:



Brian Akkashian P55544  
Counsel for Plaintiff



James E. Deline P45205  
Attorneys for Defendants

ATRUE COPY  
G. WILLIAM CADDELL  
Oakland County Clerk - Registrar of Deeds  
By   
Deputy  
C. TUCKER

N



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DELPHI AUTOMOTIVE SYSTEMS, INC.  
a Delaware Corporation,

Plaintiff,

v.

CENTRAL DIE CASTING and MANUFACTURING  
COMPANY, INC., an Illinois Corporation,

Defendant.

**FILED**

OCT 26 2001  
CLERK'S OFFICE  
U. S. DISTRICT COURT  
EASTERN MICHIGAN

*Case No. 01-74034*

BUTZEL LONG, P.C.  
James G. Derian (P33580)  
Daniel N. Sharkey (P53837)  
Attorneys for Plaintiff  
100 Bloomfield Hills Parkway, Suite 200  
Bloomfield Hills, Michigan 48304  
(248) 258-4473

Charles E. Brown (P46400)  
Delphi Legal Staff  
Co-Counsel for Plaintiff  
5725 Delphi Drive  
Troy, Michigan 48098-2815  
(248) 813-2000

KANTER, MATTENSON, MORGAN  
& GORDON  
Alan J. Morgan, Esq.  
Attorney for Defendant  
25 E. Washington Street, Suite 1500  
Chicago, Illinois 60602  
(312) 715-0637

TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the U.S.  
Courthouse located in Detroit, Michigan,  
on OCT 26 2001

PRESENT: HON. AVERN COUV  
U.S. District Court Judge

Plaintiff, Delphi Automotive Systems, Inc. ("Delphi") having filed a Motion for  
Temporary Restraining Order and Preliminary Injunction and Possession of Machine

BUTZEL LONG, A PROFESSIONAL CORPORATION, ATTORNEYS AND COUNSELORS

Tooling Pending Final Judgment (the "Motion") under Fed.R.Civ.P. 65, the Motion having been presented to the Court, and the Court having considered the Motion, Brief in Support, Verified Complaint and exhibits attached thereto, and the Court being otherwise fully advised in the premises:

THE COURT FINDS that :

A. If Defendant does not immediately resume shipments of the Components it produces for Delphi, such would constitute a breach of Defendant's Contract with Delphi and, if such shipments are not immediately resumed, Delphi will be irreparably damaged because the injury caused by Defendant's conduct is substantial, difficult to measure and threatens to injure Delphi's reputation in the community. Furthermore, injunctive relief would preserve the status quo and serve to keep the parties in their present position.

B. Delphi has sufficiently demonstrated the following to serve as a basis for the Temporary Restraining Order: (1) Substantial likelihood of prevailing on the merits; (2) Irreparable injury without granting injunctive relief because there is no adequate remedy of law; (3) The injuries suffered by Delphi in the absence of injunctive relief would be greater than that suffered by Defendant; and (4) The public interest is served by the issuance of this Temporary Restraining Order, as the shutdown of plants with consequent layoffs and other harm to the national economy would be avoided. This Order is being entered because of the immediate danger that would result to Delphi, its customers, and other automotive suppliers unless such an order is entered, and the lack of time to prevent such an occurrence.

THE COURT ORDERS that:

BUTZEL LONG, A PROFESSIONAL CORPORATION, ATTORNEYS AND COUNSELORS

1. Defendant, Central Die Casting and Manufacturing Company, Inc. is immediately restrained and enjoined from: (a) Selling, disposing, hindering, transferring or otherwise discarding all materials, tooling, equipment, forms, cash or other assets necessary to ship the Components it produces for Delphi under their Contract; and (b) Taking any activity or making any communication inconsistent with its obligations to timely supply Delphi with sufficient production quantities of the Components under the Contract.

2. Defendant shall deliver to Delphi no later than October 26, 2001 all the Components that were to be delivered to Delphi between October 19 and October 26, 2001.

3. Immediately upon execution of this Order, Defendant shall allow Delphi to take immediate possession and remove of all of Delphi's tooling and machinery, including:

- (1) Die No. 10471666;
- (2) Die No. 10471669 (first die);
- (3) Die No. 10471669 (second die);
- (4) Die No. 10478000;
- (5) Die No. 10470961;
- (6) Die No. 1880039;
- (7) Die No. 1875956;
- (8) Die No. 1989318;
- (9) Die No. 10467221;
- (10) Die No. 10470693;
- (11) Die No. 10475952;

BUTZEL LONG, A PROFESSIONAL CORPORATION, ATTORNEYS AND COUNSELORS

(12) Die No. 10475954;

(13) Die No. 1892954;

(14) Die No. 1979702;

(15) Die No. 10476597;

(16) Die No. 10476794;

(17) Die No. 10476639;

(18) Die No. 10476221;

and all associated trim dies, and all associated assembly equipment, bushings, packaging and trays, jigs, gauges, fixtures, and mold patterns located at the facilities of Defendant and its subcontractor, Tennessee Aluminum Die Corporation.

4. The parties and/or their attorneys shall appear before this Court on the \_\_\_\_\_ day October 2001, at \_\_\_\_\_, for a hearing on Delphi's motion for a preliminary injunction.

5. This Temporary Restraining Order is issued this 26 day of October, 2001, at 9:25 am.

This Order shall remain in effect until a decision is made on Delphi's Motion for Preliminary Injunction or until ten (10) days after entry of this Order, whichever occurs first.



U.S. District Court Judge

*Surety bond \$640,000 to  
pastor @*

A TRUE CC  
CLERK, U.S. DISTRICT C  
EASTERN DISTRICT OF MICH.

BY *J. J. [Signature]*

JS 44 11/99

## CIVIL COVER SHEET

COUNTY IN WHICH THIS ACTION AROSE: Wayne

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the clerk of the Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

ThyssenKrupp Fabco, Corp.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Nova Scotia Corp.  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Daniel N. Sharkey (P53837)  
Eric M. Mathis (P65384)  
Butzel Long, P.C.  
150 W. Jefferson, Suite 100  
Detroit, MI 48226

(313) 225-7000

## DEFENDANTS

Heidtman Steel Products, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Michigan Corp.

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

John M. Carey  
Watkins, Bates & Carey LLP  
National City Building  
405 Madison Avenue, Suite 1900  
Toledo, OH 43604-1207

(419) 214-2100

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State ☐ 1 ☒ 1  
Citizen of Another State ☐ 2 ☐ 2  
Citizen or Subject of a Foreign Country ☐ 3 ☒ 3
- PTA DEF  
☐ 1 ☒ 1  
☐ 2 ☐ 2  
☐ 3 ☒ 3
- Incorporated or Principal Place of Business in This State  
Incorporated or Principal Place of Business in Another State  
Foreign Nation
- PTA DEF  
☐ 4 ☒ 4  
☐ 5 ☐ 5  
☒ 6 ☐ 6

## IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suit <input checked="" type="checkbox"/> 160 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety & Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 28 USC 156 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patents <input type="checkbox"/> 840 Trademarks <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13965FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW(405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Services <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matter <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgt. Relations <input type="checkbox"/> 730 Labor/Mgt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Sec. Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

## V. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Judge from Magistrate Judgment

## IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. § 1332(a)(2)

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

☐ UNDER F.R.C.P. 23

Check YES only if demanded in complaint:

DEMAND: In excess of \$75,000

JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

11/5/04

SIGNATURE OF ATTORNEY OF RECORD

X 

Daniel N. Sharkey (P53837)  
Eric M. Mathis (P65384)

501720v2

**PURSUANT TO LOCAL RULE 83.11**

1. Is this a case that has been previously dismissed?

☐ Yes  
☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes  
☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes: \_\_\_\_\_